

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRISTOPHER SMITH,	:	NO. 1:12-CV-00425
	:	
Petitioner,	:	
	:	ORDER
v.	:	
	:	
WARDEN, TOLEDO CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's February 7, 2013 Report and Recommendation (doc. 19). No Objection has been filed.

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court concludes that the Magistrate Judge's Report and Recommendation is correct. Accordingly, the Court ADOPTS and AFFIRMS the Report and Recommendation in all respects, GRANTS Petitioner's Motion to Hold Petition in Abeyance (doc. 9), and ADMINISTRATIVELY STAYS and TERMINATES this matter on the Court's active docket pending Petitioner's exhaustion of his Ohio remedies. Such stay is conditioned on Petitioner's filing a motion

to reinstate the case on this Court's active docket within thirty days after fully exhausting his state court remedies through the requisite levels of state appellate review.

Petitioner should be granted leave to reinstate the case on the Court's active docket when he has exhausted his Ohio remedies based on a showing that he has complied with the conditions of the stay. The Court further FINDS that a certificate of appealability should not issue with respect to the stay of the Petition so that Petitioner can exhaust available state remedies because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" that Petitioner has failed to exhaust state court remedies and that the case should be stayed pending exhaustion of such remedies. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in "good faith" and therefore the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: March 21, 2013

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge